

**Hall Vs. Smith**

**Hall Vs. Smith**

**SooperKanoon Citation :** [sooperkanoon.com/79986](http://sooperkanoon.com/79986)

**Court :** US Supreme Court

**Decided On :** 1847

**Appeal No. :** 46 U.S. 96

**Appellant :** Hall

**Respondent :** Smith

**Judgement :**

Hall v. Smith - 46 U.S. 96 (1847)

U.S. Supreme Court Hall v. Smith, 46 U.S. 5 How. 96 96 (1847)

**Hall v. Smith**

**46 U.S. (5 How.) 96**

*ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT*

*OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND*

## **SYLLABUS**

Where there are privies in a contract with the knowledge of a debtor to secure to his creditor the payment of a debt, the payment of it by anyone of them other than the debtor, is a payment at his request, and is an express assumpsit to reimburse

the amount.

Where the surety of a surety pays the debt of a principal, under a legal obligation, from which the principal was bound to relieve him, such a payment is a sufficient consideration to raise an implied assumpsit to repay the amount, although the payment was made without a request from the principal.

"The United States of America, district of Maryland, to-wit:"

"At a Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, begun and held at the City of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and forty-four."

"Present, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States; the Honorable Upton S. Heath, Judge of Maryland District; Z. Collins Lee, Esquire, Attorney; Thomas B. Pottenger, Esquire, Marshall; Thomas Spicer, Clerk."

"Among other, were the following proceedings, to-wit: "

Page 46 U. S. 97

" *HENRY A. HALL v. WILLIAM SMITH* "

"District of Maryland, Circuit Court of the United States, April term, 1844."

"The declaration in this case contained counts, in the usual form, for money lent and advanced, money paid, laid out, and expended, and money had and received, and an averment that the defendant was a citizen of the State of Mississippi, and the plaintiff of the State of Maryland. Plea, nonassumpsit, and issue upon it. The suit was instituted July 3, 1843."

"At the trial of the case, the plaintiff offered in evidence the two notes hereinafter inserted, with the endorsements thereon, and further offered in evidence to prove that the defendant being indebted to a certain Philip Thornton in the sum of money hereinafter mentioned, the said Thornton brought suit against him in Baltimore

County Court, in the State of Maryland, on 18 July, 1839; while the writ was in the hands of the sheriff, and before the service thereof on the defendant, it was agreed between Smith and the attorney of Thornton, that Smith should be permitted on his honor to go into an adjoining county to see his friends, to procure security in order to relieve himself from said suit. He went and returned; and on 29 July, 1839, in the state aforesaid, gave two promissory notes to Thornton, dated August 10, 1839, one for \$2,678.90, payable on 1 April, 1840, and the other for \$2,669, payable on 1 June, 1840; both of which notes were endorsed by a certain James S. McCaleb and a certain James Kent as securities for the said Smith; and upon receiving these notes, so endorsed, Thornton discontinued the suit against Smith. These notes were not paid at maturity, and were protested for nonpayment; and in June, 1840, Thornton brought suit on both of them against McCaleb, the endorser, in Baltimore County Court, upon which he, McCaleb, was arrested, and being in the hands of the sheriff, he applied to a certain Richard Lemmon, of the City of Baltimore, to become his bail. McCaleb was the son-in-law of Henry A. Hall, the plaintiff, who resides in the State of Maryland, about forty miles distant from the City of Baltimore, and Lemmon being an intimate friend of the said Hall, and knowing McCaleb to be his son-in-law, agreed to become his bail, from the confidence he had that the plaintiff would save him harmless; and he entered bail accordingly in both of these suits."

"That at the first interview Lemmon afterwards had with the plaintiff, the latter introduced the subject, and without waiting for any application from Lemmon, assured him that he, the plaintiff, would save him harmless; and Lemmon having entire confidence in his verbal promise, did not ask any written security. Pending these suits Smith paid part of one of the notes, and before judgment was obtained upon either of them, Hall paid the balance of the last mentioned note, and upon an agreement made with the attorney of

Page 46 U. S. 98

Thornton, a suit by Philip Thornton V. Henry Hall, the plaintiff, was docketed by consent on 7 September, 1840, in the Circuit Court of the United States for the District of Maryland, and on the declaration was endorsed a direction to the clerk

to enter judgment for the amount of the damages in the narration, to be released on payment of \$2,669, with interest from 1 January, 1840, and costs, and stay of execution until 1 July, 1841; which was signed by the attorneys for the plaintiff and defendant. That, accordingly, at the next term of said court, in November, 1840, on the 4th day of the month, said judgment was entered, and the suits against McCaleb, in which Lemmon was bail, according to an arrangement between the counsel of Thornton, McCaleb, and Hall, were dismissed, having been countermanded on the 1st of September, 1840, in consequence of an agreement made between said parties, Thornton, McCaleb, and Hall, previous to said countermand, that said suit should be docketed by consent, and judgment confessed, as was afterwards done in the manner above stated."

"The judgment was confessed in the circuit court, in order to create a lien upon the real estate of Hall, which being situated in a part of Maryland which was not within the jurisdiction of Baltimore County Court, it was supposed that a judgment in that court would not be a lien upon it."

"Upon the confession of this judgment in the circuit court, the notes above mentioned were delivered to Hall by the attorney of Thornton; a part of this judgment was paid to the attorney of Thornton, by a draft of Smith in favor of McCaleb, upon a house in New Orleans, and the balance due upon it was paid by Hall on 30 June, 1841. James S. McCaleb died in the State of Mississippi, of which he was a citizen, in the summer of 1842, and letters of administration on his estate were afterwards, on 28 November, in the year 1842, granted by the proper authority in that state to Jonathan McCaleb, and on 20 May, 1843, the administrator assigned to Hall, the plaintiff in this case, the notes aforesaid."

"The notes, with the several endorsements and assignments thereon, are as follows, to-wit:"

"\$2,669 *Baltimore, August 10, 1839* "

"On the first day of January next, I promise to pay to the order of James S. McCaleb, twenty-six-hundred and sixty-nine dollars, for value received, payable

and negotiable at the Union Bank of Maryland."

"WM. SMITH"

" 4th January, 1840 -- J. G., *N.P.* Nonpayment."

"No. given -- H. &S.;"

"Endorsements -- 651. Wm. Smith, \$2,669. *January 1.* "

"JAMES S. Mc CALEB"

"JAMES KENT"

Page 46 U. S. 99

"In consideration that the amount of the within note, with interest thereon, was paid by Henry A. Hall, Esq., in behalf of James S. McCaleb, deceased, the endorser thereon, now I do hereby assign to said Henry A. Hall, said note."

"JONA. Mc CALEB, *Administrator of* "

"May 20, 1843 JAMES S. Mc CALEB, *deceased* "

"\$2,678.90 *Baltimore, August 10th, 1839* "

"On the first day of April next, I promise to pay to the order of James S. McCaleb, twenty-six hundred and seventy-eight dollars 90/100, for value received, payable and negotiable at the Union Bank of Maryland."

"WM. SMITH"

"April 1 -- Prot. nonpayment, 4 April, 1840."

"Endorsed -- Union, 583. Wm. Smith, \$2,678.90. *April 1.* "

"JAS. S. Mc CALEB"

"JAMES KENT"

" *Baltimore, July 13th, 1840. \$1,500. By cash, received of Jas. S. McCaleb, on account, the within fifteen hundred dollars.*"

"JNO. M. GORDON, *Attorney for* "

"P. THORNTON"

"\$400. *July 24th* -- By cash, \$400. JOHN M. GORDON"

"\$200. By cash, two hundred dollars. *August 3, 1840.* "

"J. M. GORDON"

"I assign the within note to Henry A. Hall, for value received."

"JONATHAN Mc CALEB, *Administrator of* "

" *May 20th, 1843* JAMES S. Mc CALEB"

The defendant offered to give in evidence that Smith and McCaleb, the drawer and payee of the two notes given to Thornton, were citizens of the State of Mississippi at the date of the notes, and that McCaleb continued to be so until his death, and that Smith still continues to be so.

Upon this evidence the following questions occurred:

1. Is the plaintiff entitled to recover of the defendant the money paid by plaintiff to Thornton, or any part of it, as being money paid for his (Smith's) use?
2. If the first question is answered in the negative, then can the defendant, upon the issue joined in this case, offer evidence that Smith and McCaleb were both citizens of Mississippi when the notes stated in the testimony were given in order to bar the plaintiff of his action in this Court as assignee of said notes?

And the judges being opposed in opinion upon each of these points, they are, at the request of the plaintiff, ordered to be certified to the supreme court at their next

session.

Upon this certificate the case came up to this Court.

Page 46 U. S. 102

MR. JUSTICE WAYNE delivered the opinion of the Court.

Upon the trial of this cause in the circuit court, two points were made upon which the judges differed in opinion, and it has been certified to his Court, as is provided for in the sixth section of the act of 1802, entitled "An act to amend the judicial system of the United States." 2 Stat. 159. From the evidence, we think that all the persons in this transaction became privies in the same contract to secure the payment of a debt due by the defendant to Thornton. The payment of it, therefore, by anyone of them, other than the debtor, was a payment at his request, and an express assumpsit to reimburse the amount.

But suppose such a privity not existing between the parties, the evidence shows it also to be a case of the surety of a surety paying the debt of a principal, under a legal obligation, from which the

Page 46 U. S. 103

principal was bound to relieve him. Such a payment is a sufficient consideration to raise an implied assumpsit to repay the amount, though the payment was made without a request from the principal. *Tappin v. Broster*, 1 Car. & P. 112; *Exall v. Partridge*, 8 T.R. 310; *Child v. Morley, id.*, 610.

We shall decide the first point certified to be answered in the affirmative, which makes it unnecessary to notice the second.

## **ORDER**

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States, for the District of Maryland, and on the points and

questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this Court for its opinion agreeably to the acts of Congress in such case made and provided, and was argued by counsel. In consideration whereof, it is the opinion of this Court that the plaintiff in this case is entitled to recover of the defendant the money paid by the plaintiff to Thornton, as being money paid for his (Smith's) use. Whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**